

Application Serial No. 10/734,783

REMARKS

1. Applicant thanks the Office for pointing out the allowable subject matter of claims 14-17, 21-23, 26-36 and 47-48.

2. **CLAIM OBJECTIONS**

Claim 18 is objected to as being of improper dependent form. Claim 18 is cancelled from the Application. Additionally, claims depending from claim 18 are amended to change their dependency in view of the cancellation of claim 18. The present objection is therefore deemed overcome.

3. **35 U.S.C. § 112**

Claims 1-54 are rejected under 35 U.S.C. 112, 2nd paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office first objects to the claims as being narrative and indefinite. Applicant respectfully disagrees. The claims either positively describe structural elements of the invention, or provide more detailed description of previously positively described structural elements or describe the interrelationship of positively described structural elements. Accordingly, it is incorrect that the claims are narrative in nature.

Even if it were true that the claims were narrative in nature, in keeping with the principles of Compact Prosecution announced in the OFFICIAL GAZETTE of October 7, 2003, Applicant invites the Office to describe in greater detail in exactly what manner the purported narrative nature of the claims fails to particularly point out and distinctly claim the subject matter of the invention. The Office is also respectfully requested to cite authority, other than '112, paragraph 2, under which the alleged narrative nature of the claims is found to be inconsistent with the law or with current U.S. practice.

The Office next observes that the claims are replete with grammatical and idiomatic errors. Applicant has carefully reviewed the claims, one by one, and

Application Serial No. 10/734,783

acknowledges a grammatical error in claim 15. Claim 15 is amended to correct the error. Except for the error in claim 15, the claims are noticeably free of idiomatic errors, grammatical errors and misspellings. Again, in deference to the principles of Compact Prosecution, Applicant respectfully requests the Office to provide more detailed guidance so that the deficiencies can be readily corrected. In the absence of further guidance from the Office, the present rejection is deemed overcome.

Claim 1 is rejected under 35 U.S.C. § 112, 2nd paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between steps. Applicant respectfully notes that claim 1 is directed to an apparatus, and recites no steps. The present rejection is therefore deemed improper.

Claim 1 is additionally rejected under 35 U.S.C. § 112, 2nd paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections.

The Office alleges the omitted structural cooperative relationships to be: producer thread, task queue and worker thread. Claim 1 is amended to incorporate the subject matter of claims 35 and 36. As amended, claim 1 describes:

"at least one work manager for each channel serviced, said work manager including at least one producer thread, a task queue and at least one worker thread; and

one or more scheduler objects associated with each producer thread;

wherein said work manager and associated scheduler objects create and maintain a broadcast schedule for each channel according to predefined criteria;

wherein said at least one producer thread checks a channel at configurable intervals and increments said channel's schedule by generating a work request and placing it in said task queue and wherein said worker threads execute said work requests; and

Application Serial No. 10/734,783

wherein said system is scalable to service a plurality of broadcast channels and/or services simultaneously." Claims 35 and 36 are cancelled from the application.

While claims 35 and 36 do not depend directly from claim 1, they do not depend on any of the intervening claims for essential structural features nor do they reference any of the subject matter of the intervening claims. Accordingly, it was unnecessary to include any portion of the intervening claims in amended claim 1.

Applicant deems the foregoing amendment to adequately describe the allegedly omitted structural cooperative relationships. The present rejection is therefore deemed overcome.

Claim 2 is rejected under 35 U.S.C. § 112, 2nd paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between steps. Applicant respectfully notes that claim 2 describes an embodiment of the apparatus described in claim 1, and recites no steps. The present rejection is therefore deemed improper.

Claim 2 is additionally rejected under 35 U.S.C. § 112, 2nd paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections.

The Office alleges the omitted structural cooperative relationships to be the structural cooperative relationship among the elements of claim 2. Applicant notes that it is not essential to a patentable combination that there be interdependency between the elements of the claimed device or that all the elements operate concurrently toward the desired result and that a claim does not necessarily fail to comply with 35 U.S.C. § 112, 2nd paragraph where the various elements do not function simultaneously, are not directly functionally related, do not directly inter-cooperate, and/or serve independent purposes. MPEP § 2172.01. Thus, the failure to describe structural cooperative relationships among certain of the components of claim 2 does not necessarily render claim 2 indefinite. For example, the communication module described in

Application Serial No. 10/734,783

claim 2 has no structural relationship with any of the other elements named in claim 2.

Nevertheless, Applicant first amends claim 2 to change the order in which the elements are listed in order to describe structural relationships between certain of the elements of claim 2 more clearly. Applicant next amends claim 2 to incorporate certain of the remaining dependent claims to describe structural relationships between the components of claim 2 more clearly. As amended, claim 2 describes:

"at least one properties file;

at least one property manager, wherein said property manager provides access to application properties, said application properties stored in any of said property file and a configuration database;

at least one database;

at least one database connection manager for managing access to data sources, wherein said database connection manager comprises an access point to connect to said database;

at least one communication module for accepting requests on a server socket and calling appropriate routines to fulfill the requests;

at least one rules factory, wherein said rules factory maintains a cache of rule objects in memory;

at least one utility thread, wherein said at least one utility thread comprises any of: a property refresher thread, a GC (garbage collection) thread for memory management and a logfile rotator thread;

at least one logging system, wherein said logging system records transactions and activities; and

at least one work creator factory, wherein said work creator factory is created during initialization of said work manager;

at least one data cache, wherein said data cache caches data common to all scheduler objects and data that change infrequently, and wherein a static data cache object contains a concrete data cache instance for each data source defined on a system; and

Application Serial No. 10/734,783

at least one main application thread wherein said main application thread comprises a starting point for said multimedia scheduler and wherein said main application thread initializes main components within the multimedia scheduler."

As amended, claim 2 incorporates the subject matter of claims 6, 7, 10, 22, 24, 32, 37, 39 and 40. The claims in question have been cancelled from the application. Amendment is made to the remaining claims, where necessary, to correct dependencies and to harmonize terminology.

Claims 1, 5, 6, and 35 and are alleged to contain deficiencies. The deficiencies noted have been remedied, either by amendment or cancellation of the claim in question.

Accordingly, all issues raised under 35 U.S.C. § 112 have been disposed of, either through cancellation or amendment or by a showing that the rejection was without merit.

4. 35 U.S.C. § 102

Claims 1-3, 18, 19, 25, 37-46, 49 and 52-54 are rejected as being anticipate by U.S. patent no. 6,477,707 ("King"). Applicant respectfully disagrees.

Claim 1: The present rejection is deemed improper for at least the following reasons: The Office relies on King, col. 2, line 3 and col. 5, line 44 "variety of media objects" as describing "one or more scheduler objects associated with each producer thread." Applicant finds no such teaching at col. 2, line 3 of King. Even if King did contain such teaching, Applicant cannot see how the expression "variety of media objects" could be found to be the exact equivalent of "one or more scheduler objects associated with each producer thread."

While the Office may give the reference teachings their broadest reasonable interpretation, an interpretation that is factually incorrect is *per se* unreasonable. Without any further description, the ordinarily-skilled practitioner, reading the expression "one or more scheduler objects associated with each

Application Serial No. 10/734,783

producer thread," would readily understand them to be components of the multimedia scheduling system. The expression "media objects" clearly describes data objects upon which a multimedia scheduler would act and are not components of the multimedia scheduler. Thus, an interpretation of King that finds the expression "variety of media objects" the exact equivalent of the scheduler object described in claim 1 is factually incorrect and therefore unreasonable. The present rejection is therefore deemed improper.

Applicant notes that the Office provides little discussion of its rationale in applying the reference teachings to the subject matter of the claims. In the interest of Compact Prosecution, the Office is respectfully invited to provide fuller discussion of its reasoning, so that the issues raised may be quickly disposed of.

In spite of the foregoing, in the interest of describing the subject matter of claim 1 more clearly, Applicant amends claim 1 to incorporate the subject matter of claims 35 and 36, which subject matter the Office has determined to be novel and inventive. As applicant noted above, while claims 35 and 36 do not depend directly from claim 1, they do not depend on any of the intervening claims for essential structural features nor do they reference any of the subject matter of the intervening claims. Accordingly, it was unnecessary to include any portion of the intervening claims in amended claim 1. Because amended claim 1 describes subject matter determined to be novel over King, claim 1 is deemed allowable. In view of their dependence from an allowable parent, the dependent claims are deemed allowable without any separate consideration of their merits. Nevertheless, Applicant provides the following comments regarding the dependent claims:

Claim 2: The present rejection is therefore deemed improper for at least the following reasons: The Office relies on King, col. 2, lines 32-34 as teaching "at least one property manager for providing access to all application properties." Applicant respectfully disagrees. The cited teaching describes transmission of subscription information. It has nothing to do with accessing or managing application properties.

Application Serial No. 10/734,783

Claim 5: The present rejection is improper for at least the following reason: The Office relies on King, col. 3, lines 54-57 as teaching "wherein said rules comprise objects that implement a rules interface.") The cited teaching describes the assignment of metadata to media objects. It has nothing to do with rules or a rules interface.

Claim 6: The present rejection is improper for at least the following reason: the Office relies on King, col. 5, lines 45-48 as teaching "wherein said rules factory maintains a cache of said rule objects in memory." The cited teaching describes storage of metadata describing attributes of media objects. It has nothing to do with rule objects.

Claim 7: The present rejection is improper for at least the following reason: the Office relies on King, col. 5, lines 45-48 and col. 8, lines 23-26 as teaching "wherein said property manager provides access to application properties, said application properties stored in any of a file and a configuration database." As above, the col. 5 teaching describe assigning metadata that describes attributes of media items. In relation to claim 6, the Office found that the metadata were equivalent to rules. Here, the Office finds that the metadata are the equivalent or application properties. In fact they are neither. The col. 8 teaching describes a subscription database that contains billing and subscription information for the media objects, which has nothing to do with application properties.

Claim 8: The present rejection is improper for at least the following reasons: Claim 8 is rejected as being inherently anticipated by King. Claim 8 describes "wherein properties are loaded into a properties object in said property manager when said property manager is initialized by said main application thread." As above, the Office has failed to show that King even teaches a property manager or properties objects. Thus, since no property manager or property object has been shown to be taught, it is impossible that King inherently teaches anything about a property manager or about a property object.

Even if the Office had persuasively shown that King did teach such subject matter, the present rejection appears to be based on a notion that King could

Application Serial No. 10/734,783

include the subject matter of claim 8. The Office is respectfully reminded that such showing is insufficient to demonstrate that King inherently teaches the subject matter of claim 8. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (IV), quoting *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993). Additionally, to establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference" MPEP § 2112 (IV) quoting *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Here, the Office provides no rationale or extrinsic evidence that the system described in King must necessarily include the subject matter of claim 8.

Claim 9: The present rejection is improper for at least the following reasons: As above, the Office has failed to demonstrate the King includes a property manager. Thus, for this reason alone, the present rejection is improper. Additionally the Office cites King, col. 13, lines 51-54 as teaching "where said property manager includes a method for refreshing properties at regular intervals, wherein said method is called by one of said utility threads." The col. 13 teaching however, refers to the subscription manager, which has nothing to do with application properties or refreshing application properties. The cited teaching describes updating subscription information when it receives a subscription message. Thus, even if it were correct that subscription information were the exact equivalent of application properties, the information is not refreshed at regular intervals. It is updated only upon receipt of a new subscription.

Claim 10: The present rejection is improper for at least the following reasons: The Office has failed to make a persuasive showing the King "must necessarily" the subject matter of claim 10.

Claim 11: The present rejection is improper for at least the following reasons: The Office relies on King, col. 14, lines 41-53 as teaching "wherein said database connection manager maintains a thread local cache of connections for each thread." The col. 14 teaching describes a proxy server

Application Serial No. 10/734,783

which manages an HTTP cache. The cited teaching has nothing to do with application threads or caching connections for application threads.

Claim 13: The present rejection is improper for at least the following reasons: the present rejection is improper for the same reasons that the rejection of claim 11 is improper.

Claim 18: Claim 18 is cancelled from the application, rendering the present rejection moot.

Claim 19: The present rejection is improper for at least the following reasons: The Office relies on col.5, lines 45-45 and col.14, lines 54-56 as teaching "wherein a port number for said socket is configured in said property file. As above, the Office has failed to demonstrate that King teaches an application property file at all. Additionally, as above, the col. 5 teaching has nothing to do with application properties – rather it describes media object attributes. It makes no sense at all to postulate that King would store application properties in a database of media object metadata. Additionally, the col. 14 teaching describes a "streaming data receiver" and has nothing to do with port numbers and property files.

Claim 25: The present rejection is improper for at least the following reasons: The Office relies on King, col. 12, lines 65-67 as teaching "wherein logging behavior is configurable by means of a logging properties file." The cited teaching describes the maintenance of subscription records by a subscription manager. There is no teaching of logging behavior, or of logging behavior being configurable or of a logging properties file.

Claims 38 - 44: The present rejections are improper for at least the following reasons: The Office alleges that the subject matter of claims 39 – 44 is inherently anticipated by King. The Office has failed to make a persuasive showing, either by rationale or extrinsic evidence, that King necessarily includes the subject matter of claims 38-44.

Claim 46: The present rejection is improper for at least the following reasons: The Office relies on King, col. 1, lines 47-49 as teaching "wherein said main application thread constitutes a class." The cited teaching discusses

Application Serial No. 10/734,783

the media objects and streaming data. It says absolutely nothing about a main application thread.

5. 35 U.S.C. § 103

Claim 20 is rejected as being unpatentable over King in view of U.S. patent no. 7,020,893 ("Connelly"). In view of the foregoing amendment to claim 1, the present rejection is deemed overcome. In view of the foregoing amendment to claim 1, the present rejection is deemed overcome.

Claims 50 and 51 are rejected as being unpatentable over King. In view of the foregoing amendment to claim 1, the present rejection is deemed overcome.

Even if claim 1 had not been amended, in view of the impropriety of the rejection of claim 1, the present rejections would also be improper.

6. No new matter is added by way of the above amendments. The above amendments are made solely for the purpose of describing the invention more clearly, in the interest of advancing prosecution of the application. Such amendments are not an indication of Applicant's agreement with the Office's position, nor do they signify Applicant's intention to sacrifice claim scope. Application expressly reserves the right to pursue patent protection of a scope it reasonably believes it is entitled to in one or more continuing applications.

7. For the record, Applicant respectfully traverses any and all factual assertions in the file that are not supported by documentary evidence. Such include assertions based on findings of inherency, assertions based on official notice, and any other assertions of what is well known or commonly known in the prior art.

Application Serial No. 10/734,783

CONCLUSION

In view of the foregoing, the Application is deemed to be in allowable condition. Applicant therefore respectfully requests reconsideration and prompt allowance of the claims. Should the Examiner have any questions regarding the Application, he is invited to contact Applicant's attorney at 650-474-8400.

Respectfully submitted,



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